IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-11-2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.6343 of 1998

K.Nallathambi .. Petitioner.

Versus

1.The Ex.Officio Secretary to
Government, Co-operative, Food and
Consumer Protection Department,
Fort. St.George, Madras-600 009.

2.The Additional Collector,
Salem District, Salem.

3.The Special Tahsildar (F.S),
Salem. .. Respondents.

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records, dated 15.9.1995, passed by the 1st respondent in G.O.Ms.NO.378, Co-operation Food and Consumer Protection Department in so far as it relates to the portion disallowing the appeal against the order, dated 10.10.1992, of the 2nd respondent in R.O.C.99855/92/J3 and quash the same and consequently, direct the respondents to return the bank guarantee furnished by the petitioner pending enquiry before the 2nd respondent.

For petitioner : Ms.J.Juliet Pushpa

For respondents: Mr.V.Manoharan
Government Advocate

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O R D E R

Heard Ms.J.Juliet Pushpa, the learned counsel appearing for the petitioners and Mr.V.Manoharan, the learned Government Advocate appearing for the respondents.

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2. It is submitted by the learned counsel appearing for the petitioner that 130 bags of paddy, which had belonged to the petitioner, was seized by the third respondent, on 22.7.1992, while it was being transported from Udayakumar Rice Mill at Nethimedu, Salem to J.R.Rice Mill, Thiruchengode, alleging that the lorry driver was not in possession of any bill regarding the purchase of paddy and that no trip sheet containing the relevant entries regarding the transport of paddy was in the lorry. A report was made by the third respondent to the second respondent, under Section 6-A of the Essential Commodities Act, 1955. On receipt of the said report, the 2nd respondent had initiated proceedings against the petitioner and the owner of the lorry. It was contended by the petitioner that he had not contravened Clauses 4(1) and 19(1) of the Tamil Nadu Essential Trade Article (Regulation of Trade) Order, 1984, read with Section 7(1)(a)(ii) of the Essential Commodities Act, 1955. However, after the completion of the enquiry, the 2nd respondent had passed an order, on 10.10.1992, confiscating the entire stock of paddy and imposed a fine of Rs.5000/- on the owner of the lorry. Aggrieved by the said order, an appeal was preferred before the first respondent, wherein the order passed by the 2nd respondent was modified holding that 75% of the seized paddy and 75% of the fine imposed on the owner of the lorry could be confiscated. In all other respects the appeal was dismissed. Aggrieved by the said order, the present writ petition has been filed, invoking Article 226 of the Constitution of India.

3. In the appeal filed by the petitioner before the first respondent, challenging the order of the second respondent, dated 10.10.1992, it has been stated that the second respondent had failed to note that the petitioner is the owner of the seized stock of paddy and that he is a licenced wholesale dealer in paddy and rice, having a licence with licence Number T.N.E.T.A.No.1366 and he is the owner of J.R.Rice Mill at Tiruchengode. Further, A.Doraisamy who had sold the consignment of paddy to the petitioner is also a licenced wholesale dealer in paddy and rice, having licence in Tamil Nadu Essential Trade Article (Regulation of Trade) Order, 1984, No.151/SLM/84-85. Therefore, there is no question of any contravention of Clauses 4(1) or 19(1) of the Tamil Nadu Essential Trade Article (Regulation of Trade) Order, 1984. Merely because the lorry carrying the consignment of paddy had been parked near a petrol bunk and since the lorry driver was not in possession of any bill in respect of the consignment and that no entries had been made in the trip sheet, it cannot be concluded that the provisions of the Tamil Nadu Essential Trade Article (Regulation of Trade) Order, 1984, had been contravened. No mahazar of the seized consignment had been prepared and given to the driver of the lorry from whose custody the seizures had been made. Such failure to follow the mandatory requirement under the proviso to Clause 27(e) of the Tamil Nadu Essential Trade Article (Regulation of Trade) Order, 1984, is illegal and therefore, the goods seized in pursuance of an illegal

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seizure, cannot be ordered to be confiscated. Even though the petitioner had submitted claim applications, stating the circumstances in which the lorry with the consignment of paddy was found parked near the petrol bunk in Kondalampatty and had enclosed the copy of the bill and the lorry weighment slip in support of his claims, the second respondent had passed the impugned order without considering the same.

4. The learned counsel appearing on behalf of the respondents had submitted that, on 22.7.92, the Special Tahsildar (F.S), Salem, had checked the parked lorry bearing No.TNS 2386 and it was found that 130 bags of paddy had been loaded in the lorry and transported without any permit or licence and without any valid documents like bills and without the relevant entries in the trip sheet. Therefore, the lorry had been seized with the consignment and a report had been sent to the Additional Collector, Salem, for taking necessary action, under Sections 4(1) and 19(1) of the Tamil Nadu Essential Trade Article (Regulation of Trade) Order, 1984. The Additional Collector, Salem, after an enquiry, had ordered confiscation of the 130 bags of paddy and had imposed a fine of Rs.5,000/- on the lorry owner as the seized stock of 130 bags of paddy had already been released temporarily to the claimant on his furnishing a bank guarantee for Rs.42,000/-, being the value of the seizure. The said amount had been forfeited to the Government. It was held that since the lorry driver had not made any entries in the trip sheet, the lorry owner is vicariously liable for the omission on the part of the driver to record the entries. Therefore, a fine of Rs.5,000/- had been imposed on the owner of the lorry.

5. It is further submitted by the learned counsel appearing on behalf of the respondents that on an appeal filed by the petitioner, the first respondent by its order made in G.O.Ms.No.378, Co-operation, Food and Consumer Protection Department, dated 15.9.95, had amended the order of the Additional Collector, Salem, to the extent that 75% of the seized paddy and 75% of the fine amount on the lorry owner, may be confiscated to the Government and the rest to be returned to the respective appellants therein. As per the Government order, dated 15.9.95, the appellants therein had deposited a sum of Rs.31,500/- and Rs.3,750/- being the value of 75% of the seized paddy and 75% of the fine imposed on the lorry owner. Therefore, a request had been made for the remittance of the said amounts as the bank guarantee certificates produced by the appellants therein had lapsed on 29.9.1973.

6. From the impugned order passed by the first respondent, it is seen that the petitioner had stated that the seizure had taken place when the lorry was parked and not while it was moving. It had also been stated that after the loading of the consignment and after weighing the lorry a person had gone to collect the bill from the rice mill from where the goods had been loaded when the seizure had taken place.

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7. It had also been contended that Clause 4(1) of the Tamil Nadu Essential Trade Article (Regulation of Trade) Order, 1984, does not apply to the petitioner, since the consignment had belonged to the licenced wholesale dealer. A comparison of weigh bill slip and the bills relating to the goods show the genuineness of the transaction. Since no copy of the mahazar had been given to the driver of the lorry at the time of the seizure, such seizure and confiscation of the goods would be invalid.

8. It is clear from the impugned order that even though the petitioner had raised various contentions sufficient evidence had not been placed before the first respondent to substantiate the contentions. Since the petitioner could not show that the impugned proceedings are contrary to the provisions of law or the principles of natural justice, the impugned order cannot be said to be illegal or void.

9. Based on the submissions made by the counsels appearing on behalf of the parties concerned and on a perusal of the records available before this Court, this Court is of the considered view that the petitioner has not shown sufficient cause or reason to interfere with the impugned proceedings, as prayed for in the writ petition. Therefore, the writ petition stands dismissed. No costs.

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Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1.The Ex.Officio Secretary to
Government, Co-operative, Food and
Consumer Protection Department,
Fort. St.George, Madras-600 009.

2.The Additional Collector,
Salem District, Salem.

3.The Special Tahsildar (F.S),
Salem.

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